



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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SEP 28 2004

Dean C. Plaskett, Esq., Commissioner
Department of Planning and Natural Resources
Government of the U.S. Virgin Islands
Wheatley Shopping Center II
Charlotte Amalie
St. Thomas, Virgin Islands 00802

Re: Evaluation of the Virgin Islands' Operating Permits Program

Dear Commissioner Plaskett:

The U.S. Environmental Protection Agency (EPA) has an ongoing program of conducting evaluations of state and territories' Title V air permitting programs. As part of this program, staff from Region 2 conducted a review of the Virgin Islands' Title V Program beginning September 17 and 18, 2003. The purpose of these evaluations is to ensure that states and territories are implementing the permitting program in a manner consistent with federal regulations and guidelines. I want to thank you for the assistance and information the Department of Planning and Natural Resources (DPNR) staff provided during this evaluation. Based on our review, we have found areas of successes, but also areas of serious deficiencies in the program implementation that need to be addressed by DPNR. Below is a summary of our findings and enclosed is a detailed evaluation of the Title V Program for your review. EPA stands ready to work with you in developing strategies to resolve deficiencies in the Title V Program.

Areas of Success-

- 1) **Small Business Program:** The DPNR has actively encouraged this program under Title V. Specifically, in 2002 the DPNR mailed 1900 manuals and 3000 fact sheets, fielded 1080 phone calls, replied to 1430 e-mails, organized 4 workshops and conducted 87 on-site compliance assistance visits.
- 2) **Fee Collection, Retention and Tracking:** The DPNR maintains a computerized accounting of the Title V fee revenues and is aggressive in fee collection and tracking of expenses related to this program.

Areas of Concern-

- 1) **Permit Issuance Rate:** As of the date of this review, DPNR had issued permits to only two out of eight sources. However, since September 2003 DPNR has expedited the issuance of

permits and has now issued four final permits and four draft permits. While I applaud DPNR's latest progress I must note that EPA granted interim approval to the Virgin Islands' Operating Permit Program on July 31, 1996 and the Clean Air Act requires that all permits be issued within three years of that approval. The remaining permits need to be processed as quickly as possible.

2) Permit expertise: The staff's proficiency in developing a comprehensive permit and understanding the permitting process needs to be improved. The DPNR relied heavily on contractor support and EPA assistance in issuing permits and we believe the DPNR may not have the in-house expertise to develop Title V permits and consequently properly oversee the contractor's efforts in developing permits.


3) Permit Files: The files were not well organized and lacked required information. We found it difficult to find follow-up documents. Further, the permits lacked a "Statement of Basis" which is a part of the permit package that explains the applicability and the compliance obligations of a source in a plain text so that citizens may understand what is being done. A Statement of Basis is required by federal regulations.

4) The Allocation of Fee Revenue, the Budget, and adequacy of Fees: EPA's preliminary review of the financial part of the permitting program indicates that the DPNR has carried a surplus in this program every year. EPA may conduct a follow up financial audit to ensure that expenses have been properly allocated.

These program deficiencies need your immediate attention. If the DPNR does not correct the problems noted in the evaluation, EPA would be required to take action under 40 CFR 70.10(b)(1) to rectify these deficiencies. Such action would require the issuance of a Notice of Deficiency in the Federal Register and subsequently withdrawing the Virgin Islands's Title V Program. However, EPA need not initiate action if the DPNR demonstrates that it has made significant progress to rectify these deficiencies. I am therefore, asking that the DPNR submit an action plan by November 15, 2004, with quarterly milestones and responsible person(s), on how the program deficiencies will be corrected within 180 days of the date of this letter.

Again I would like to thank you for the assistance the DPNR staff provided during the audit and your consideration in resolving this matter. I look forward to working with you in addressing these issues and ask your staff to contact Mr. Raymond Werner, Chief, Air Programs Branch, at (212) 637-3706 so that we can discuss the findings in detail and find ways to resolve them.

Sincerely,


for Jane M. Kenny,
Regional Administrator

Enclosure

cc: Aaron Hutchin, VIDPNR, w/
Leonard Reed, VIDPNR, w/
Leslie Leonard, VIDPNR, w/

U.S. Virgin Islands' Title V Program Evaluation Report

EPA Region 2

[September 17-18, 2003]

**The Environmental Protection Agency's (EPA) Review of the United States Virgin Islands
Department of Planning and Natural Resources's (DPNR) Title V Program
September, 2003**

Outline

- I. Introduction**
- II. Executive Summary**
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 - B Responses to EPA's Program Review Questionnaire**
 - C Management Interviews**
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**Virgin Islands Department of Planning and Natural Resources's (DPNR)
Title V Program Review**

I. Introduction

As part of EPA's oversight responsibilities, EPA Region 2 staff conducted a program review and evaluation of the Virgin Islands' federally approved Title V program. Following Agency guidance, EPA Region 2 staff, in September 2003, evaluated air permitting and enforcement files, and conducted management and staff interviews. The Region also identified DPNR's program successes and failures. This report summarizes items discovered during EPA Region 2's review and evaluation of the Virgin Islands' approved Title V program, which is administered and enforced by the DPNR. Virgin Islands's program covers eight sources. The DPNR had issued permits to two sources as of the date of this review. However, by early 2004, the DPNR has issued four final permits and drafted the remaining four permits. The DPNR plans to issue final permits for all eight sources by the end of 2004.

II. Executive Summary

Overview-

The purpose of the Region's review was to determine whether the Virgin Islands is complying with the 40 C.F.R. Part 70 requirements and Title V of the federal Clean Air Act ("the Act") with respect to administration and enforcement of Virgin Islands's approved Title V program, or if not, is taking corrective action to do so. The Region reviewed and evaluated the Virgin Islands's administration and enforcement of the program against the requirements of 40 C.F.R. Part 70. The details of the review are included in this report. EPA's review is based on DPNR's responses to the program/fee evaluation questionnaires, management interviews, file reviews and on-site discussions. As part of this evaluation the DPNR provided information related to its rules, files/permits, financial records and small business activities. In response to EPA questions, the DPNR listed increased source participation/interaction, adequate revenue collection and locating all applicable requirements in a single document as the primary benefits of this program. The following is Region 2's analyses of the Virgin Islands's Title V program.

Areas of Success-

1) Small Business Program: The Virgin Islands has actively encouraged this program under Title V. For example, in 2002, DPNR mailed 1900 manuals and 3000 fact sheets, fielded 1080 phone calls, replied to 1430 e-mails, organized 4 workshops and conducted 87 on-site compliance assistance visits.

2) Fee Collection, Retention and Tracking: The DPNR maintains a computerized accounting of the Title V fee revenues and is aggressive in fee collection and tracking of expenses related to this program.

Areas of Concern-

1) Permit Issuance Rate: Virgin Islands's Title V Program was approved in July, 1996 and it had committed to issue all permits by July, 1999. As of the date of this review, Virgin

Islands had issued permits to only two out of eight sources. However, since September 2003 Virgin Islands has expedited the issuance of permits and has now issued four final permits and four draft permits.

2) Staffing Issues: Although there is very low turnover at the DPNR, the staff lacks knowledge and the understanding of the permitting process and the skill to develop a comprehensive permit. The DPNR relied heavily on contractor support and EPA assistance in issuing permits and as such, may not have the in-house expertise to developing Title V permits or properly oversee a contractor's efforts.

3) Permit Files: The files were not well organized, follow-up documents were not found, drafts of the permits, application forms etc. were incomplete or missing in many folders. Further, the permits lacked a Statement of Basis which explains the applicability and the compliance obligations of a source in a plain text. The Statement of Basis is a Title V requirement.

4) The Allocation of Fee Revenue, the Budget, and adequacy of Fees: EPA's preliminary review indicates that the DPNR has carried a surplus in this program every year. A follow up financial audit needs to be conducted to ensure that expenses have been properly allocated.

Recommendations-

1) Virgin Islands needs to correct the deficiencies within 180 days. If the following deficiencies are not corrected Region 2 may need to issue a formal Notice of Deficiency (NOD).

- a) the lack of permitting expertise of the DPNR staff;
- b) the lack of organized and complete file for each Title V application; and
- c) the lack of any Statement of Basis explaining the permitting rationale

2) Virgin Islands needs to substantiate the accuracy of the expenses charged to this account and how it has used the surplus revenue from this program.

III. Focus of the Evaluation and possible outcome:

This program review focused on two questions:

(1) Is the Virgin Islands administering its permitting program consistent with the requirements of 40 C.F.R. Part 70?

(2) Is the Virgin Islands adequately enforcing its permitting program consistent with the requirements of 40 C.F.R. Part 70?

In terms of possible outcomes, the EPA may withdraw a state agency's (or in this case the Virgins Island's) program approval in whole or in part whenever the approved program no longer complies with the Federal requirements and the permitting authority fails to take corrective action. The Region identified several issues of sufficient significance that could lead to a determination of program deficiency. If EPA makes a formal deficiency determination, it publishes an NOD in the Federal Register, notifying the state of the determination and the corrective actions required. The state must correct the deficiency within eighteen (18) months or face the imposition of sanctions in accordance with section 502(i)(2) of the Act, 42 U.S.C. § 7661a(i)(2). EPA must withdraw the program approval and then promulgate a federal operating

permits program if the state has failed to correct the deficiency pursuant to Section 502(i)(4) of the Act within two years. It is not the Region's goal to implement this program in the Virgin Islands but to ensure that the DPNR issues all permits expeditiously and issues permits that meet all Virgin Islands and Federal requirements. If, however, EPA withdraws program approval, EPA will issue Title V permits and enforce the Title V program. Moreover, EPA has the discretionary authority to apply the sanctions, withdraw program approval, and promulgate a federal program if the state has failed to take significant action within ninety (90) days, under Section 502(i)(1) of the Act and the implementing regulations found at 40 C.F.R. § 70.10(b)(2).

IV. Evaluation of Virgin Islands' Title V Program

A. Review and Evaluation of the DPNR's Administration of the Title V Program

On September 17-18, 2003, staff from the Division of Environmental Planning and Protection and the Caribbean Environmental Protection Division conducted an onsite review of the VI's Title V air permitting program. Prior to the onsite visit, regional staff reviewed in-house state agency documents and files, including public notices, and permits. The Region sent questionnaires for the Title V program review in advance to the DPNR. These questionnaires were developed by the representatives from various EPA regions and Headquarters and are used nationally. See Appendix 1.

The review focused on the adequacy and appropriateness of the following five areas:

- (1) Acting in a timely manner on applications for initial permits
- (2) Issuing permits that are consistent with the requirements of 40 C.F.R. Part 70
- (3) Complying with the public participation requirements of 40 C.F.R. Part 70
- (4) Collecting, retaining, or allocating fee revenue consistent with the requirements of 40 C.F.R. Part 70
- (5) Acting in a timely manner on renewals and revisions

(1) Acting in a timely manner on applications for initial permits

The Region evaluated DPNR's timeliness in acting on Title V air permit applications by reviewing information regarding the number of sources permitted and those which still need an initial Title V permit. The Region's review relied on information from the state's air permit chart, quarterly input for the Title V Operating Permits System, and staff interviews. Based on this information, the DPNR has a backlog in issuance of initial Title V permits. Virgin Islands began this program with a potential Title V universe consisting of 10 sources¹.

¹Information in this section regarding the Title V universe in Virgin Islands was obtained from the DPNR Title V air permitting staff. This information is provided by DPNR to the Region on a quarterly basis and is inputted into the Title V Operating Permits System.

The DPNR subsequently removed two sources from the universe of the ten potential sources affected by this program. As of September 18, 2003, the DPNR had approximately 6 initial Title V permits remaining to be issued. Its 25% permit issuance rate was well below the national averages of 70%. It should be noted that in 2002 DPNR committed to issuing all remaining permits by December 2003.

In 2002, the DPNR hired a contractor to review applications and draft permits to remedy some of the delays. The DPNR still could not issue all permits in a timely manner because of a lack of contractor oversight and has now hired a new contractor. Nationally, most of the permitting authorities estimate a completion date for initial Title V permit issuance between December 2003 and September 2004. The DPNR's estimated completion date is beyond this range. The following Table lists all potential Title V sources and the status of their applications.

Potential Title V Source in the Virgin Islands	Application Status [September, 2003]
Buccaneer Hotel	Final permit issued on May 30, 2003
Wyndham Sugar Bay Resort	Final permit issued on May 30, 2003
Marriot Frenchmans Reef	No longer a Title V source (gets power from VIWAPA)
St. Croix Alumina	No longer a Title V source (Closed- Bought by St. Croix Renaissance Park)
Divi Divi Hotel	Application under review/drafting permit
VIWAPA St. Croix	Working on Final Permit
VIWAPA St. Thomas	Working on Final Permit
VIWAPA St. John	Application under review/drafting permit
HOVENSA	Application under review/drafting permit
Roy Schneider Hospital	Application under review/drafting permit

In addition, Title V permits must be renewed every five years. The DPNR expects its first permit renewal in the Spring of 2008. The delay in issuing Title V permits at facilities can adversely affect compliance monitoring efforts as well as surveillance and enforcement activities.

The DPNR has seven staff members for the air program which is comparable with other state agencies with similar types and quantity of sources. They handle minor source permitting and compliance activities. Unlike most states these staff members have no New Source Review responsibilities and can dedicate more of their time to drafting Title V permits. It should be noted that all DPNR permits are being drafted by the DPNR contractor. Based upon EPA review

and evaluation of DPNR's implementation of timely issuance of permitting activities required under the regulation, the Region believes that a lack of management effectiveness related to providing training, incentives and control is a probable cause for 25% permit issuance rate. Upon inquiry, the DPNR managers stated that they have difficulty in providing the staff incentives because the DPNR has a low salary structure. Regardless of the cause this needs to be addressed.

(2) Issuing permits that are consistent with the requirements of 40 C.F.R. Part 70

The Region reviewed 2 final and 2 draft permits proposed by DPNR since April 2001. This number represents approximately 50% of the Title V initial major source permits proposed since April 2001. Each permit was reviewed for consistency with the Title V air permit regulations (40 C.F.R. Part 70) using the written questionnaire referenced previously. The Federal requirements regarding permit content are outlined in 40 C.F.R. Part 70.4. Each permit was reviewed for consistency with these Part 70 requirements. The majority of the Part 70 requirements related to permit content were found in the general conditions of DPNR's permits. Of the permits reviewed, there was one concern relating to Part 70 permit requirements.

This concern deals with the lack of preparation of the statement of basis. During the discussions, EPA suggested to the DPNR that one generic statement of basis for power generating sources could be developed and this generic statement of basis may then be modified to suit seven of the eight permits because all these sources have the permits for power generating units. EPA identified that a separate statement of basis will be required for HOVENSA because it is a large refinery unlike other sources on the island. It should be noted that EPA had reviewed multiple drafts of the four permits that were processed by the DPNR and provided extensive input before the draft permits were issued to the sources.

(3) Complying with the public participation requirements of 40 C.F.R. Part 70

The Federal Title V regulations require all permit actions, except minor permit modifications, provide for adequate public notice. The Virgin Islands has adopted provisions regarding public notice in Virgin Islands Rules and Regulations, Air Pollution Control, Title 12, Chapter 9, Section 206-73(d). This regulation requires that the permitting authority publish a public notice for all applications pertaining to a Part 70 source. This notice must include the opportunity for public comment and a hearing on the draft permit. The notice must be published in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice as well as any other method necessary to assure adequate notice to the affected public. The DPNR meets this requirement and provides a minimum of 30 days for public comment and is required to give notice of any public hearing at least 30 days in advance of the hearing.

Region 2 permitting staff requested and reviewed the permit files for four Title V applications for which draft permits had been issued and had gone through the public comment period to assure that adequate information was available in the file room for review by the public.

This number represents all of the draft Title V permits that went through the public comment period at the time of program review. We also reviewed copies of the public notices for the draft permits where available. Region 2 determined that files were incomplete and documents were not organized in an orderly manner and that copies of the public notices were available only in some cases. The Region's review of the air permit files included a review of the draft permit, final permit (if applicable), and the permit application. This review indicated that file organization needs improvement. Although the DPNR provides an opportunity, there has not been public participation in the permit process to date and typically the DPNR concludes a public hearing within half an hour of scheduled start up time.

EPA Region 2 staff relied on help from the permitting and enforcement staff to locate the needed information. The DPNR staff was extremely helpful in locating information when Region 2 staff had problems finding documents. The staff made good efforts in locating documents whenever they could. However, lack of many documents in the file was a problem. Based upon EPA review and evaluation of DPNR's implementation of public notices, hearing procedures, and source files, Region 2 concludes that maintaining complete document files is a problem that DPNR must address.

(4) Collecting, retaining, or allocating fee revenue consistent with the requirements of 40 C.F.R. Part 70

The Federal requirements regarding Title V fee adequacy are found in 40 C.F.R. Part 70 section 70.9. The provisions in Part 70 require that the state program require Part 70 sources to pay a fee sufficient to cover the permit program costs (direct and indirect). Further, states can only use Title V fee revenues for Title V program costs.

EPA Region 2 conducted a preliminary review of the DPNR's Title V fee process. The EPA sent a list of questions and specific documentation required in advance of the on-site review. The purpose was to verify that there were procedures in place for the receipt, separation, expenditure, and adequacy of the Virgin Islands' Title V funds. All specific answers and documentation were provided either during the onsite review or when additional requests were made.

EPA Region 2 was able to verify that Title V fees are being calculated in accordance with the DPNR Title V fee regulation (@ \$18/ton). The DPNR's invoices are maintained by company (facility), invoice number, and the total amount billed. The DPNR sends an invoice annually to each company and identifies the company's Title V fee. The invoices are prepared based on previous year's emission data. The DPNR provided sample invoices to Region 2 for review. Region 2 was able to calculate the air maintenance fees and determined that the fees agree with amounts billed. The DPNR does not charge any other fee to a Title V facility. Most companies choose to submit one check for the total amount of fees in the invoice. Payments are received and recorded by facility name and invoice number. The DPNR charges late fee and some facilities are consistently late in paying the fees.

Upon receipt of a company's check, DPNR does not use the company's name/invoice to record the Title V fee amount. Further, DPNR does not deposit the Title V fee portion in a separate fund, but instead they are held in the Virgin Islands's Air Protection Fund and are not identified as Title V fee revenues. Title V revenues are co-mingled with fees from programs other than Title V. However, DPNR's revenue collection system can produce a report that lists the Title V fees received from each company or the total amount of Title V fees received annually from all companies. The system also can produce a report listing companies that have paid their required Title V fee, and also identify who has failed to pay the annual Title V fee. There is also a system in place to assure that those who pay late are assessed a late fee and/or pay DPNR's required late fee. The DPNR currently has the capability to calculate and charge late fees to delinquent companies. Further, the DPNR system can produce a report showing that Title V fees received from companies were not used as some portion of the state's match share for the section 105 grant and there is a system that records that Title V fees are being used only for Title V activities. The Virgin Islands's system does differentiate direct/indirect expenditures for Title V purposes. The accounting system was able to report Title V direct/indirect expenditures separately, based on a unique reporting code. Region 2 is concerned, however, that the DPNR needs to verify or certify the accuracy of the activities/expenses charges to this Title V account.

The DPNR provided Accounts Receivable/Expenditure listings for fiscal year FY00 through FY 02 for the Title V program. Every year the DPNR reported a positive balance in the Title V accounts. In FY 02, the cumulative surplus is reported to be \$ 380,078. The DPNR's expenses on Title V program activities were approximately a million dollars in FY 01 and FY 02. The DPNR carries forward any surplus to the next fiscal year. The DPNR does budget for the Title V program costs. Based on the information provided by the DPNR, Region 2 concludes that Virgin Islands collects sufficient fees to cover for the cost of its Title V program. Based upon Region 2's review it is concerned that the Virgin Islands has not taken any steps to reduce the surplus funds in its Title V account by either returning the monies to the facilities, reducing the fees, or investing the monies in needed improvements to the Title V permitting program. A separate financial audit for the expenses incurred in running this program needs to be conducted.

(5) Acting in a timely manner on any applications for permit renewals

EPA Region 2 identified a serious concern that the Virgin Islands is not in a position to act in a timely way on Title V permit renewals. Although, no renewal is due until 2008, EPA is concerned that the renewal process may also be delayed if the DPNR does not take steps now to increase the expertise of its permitting staff.

B. Review and Evaluation of the DPNR's Enforcement of the Title V Program

As part of EPA's oversight of Virgin Islands's approved Title V program, Region 2 evaluated the DPNR's Title V enforcement program. The review focused on the following three areas:

- 1) the DPNR's enforcement staff's involvement in the permitting area;
- 2) the DPNR's needs for training; and
- 3) the DPNR's inspection and monitoring activities of sources subject to Title V program requirements.

Currently, the DPNR enforcement staff does not get involved in the Title V permitting process. EPA recommends that the enforcement staff needs to review the draft permits and provide input from the enforcement perspective. The DPNR indicated that the enforcement staff needs training in continuous emission monitoring systems and inspection of complex refinery processes. Although two facilities currently have Title V permits, the DPNR staff conducts a basic inspection of every Title V facility on a quarterly basis. The DPNR has not yet received any annual compliance certificate because the first permit was issued in the Spring of 2003. All other inspections pertain to many small generators located on the Islands.

C. Review and Evaluation of the Virgin Islands's Small Business Program

The Small Business Program (SBP) is run by three full time employees and is actively engaged in providing many services to about 5000 small businesses on the three Islands. The SBP has a budget of about \$200,000 and is entirely funded by the Title V program. The SBP develops and maintains a database of about 5000 small businesses on the islands. The staff conducts on-site visits to provide technical assistance. For example, the SBP visited 87 auto repair shops, 10 air conditioning and refrigerator repair shops and 2 bakeries in 2003. The SBP provided 1944 manuals, 3023 fact sheets, fielded 1080 phone calls and responded to 1430 e-mails in 2003. The SBP also has a web site and keeps updating the site to provide regular information. In 2003, the staff participated in 4 workshops and delivered assistance to specialized groups. In a unique environmental initiative, the SBP met with the Ship Master and the Environmental Officer of the Royal Caribbean Cruise Ship to discuss environmental issues related to the visiting ships. The cruise ship agreed to provide funding for recycling projects on the island and will also let a DPNR Environmental Officer visit the ship to ensure that good environmental practices are implemented. Thus, based on the EPA discussions and the review of the yearly reports, Virgin Islands's Small Business Program is a success.

Recommendations

- 1) **Virgin Islands need to correct the following deficiencies within 180 days:**
 - a. **the lack of expertise and involvement of the DPNR staff in developing Title V permits;**
 - b. **the lack of organized and complete filing for each Title V application; and**
 - c. **the lack of any Statement of Basis explaining the permitting rationale**

The Region, therefore, determined that a Pre-Notice of Deficiency letter outlining these deficiencies be sent to DPNR now. If the DPNR fails to correct these deficiencies within 180 days, EPA may issue a Notice of Deficiency to begin the withdrawal of Title V Program.

2) Virgin Islands needs to substantiate the accuracy of the expenses charged to this account and how it has used the surplus revenue from this program. EPA may conduct a follow up financial audit to ensure that expenses and revenues are properly allocated.

Region 2's Air Program Branch conducted a brief evaluation of the accounting practices related to the Title V program and observed that the DPNR collects fees in the amount that is more than the expenses it incurs in running this program. The Title V programs has been running a surplus every year. It is unclear how this surplus money is handled in the over all DPNR budget. Secondly, the DPNR appears to charge expenses in a wide variety of activities that may require further scrutiny. Thirdly, the DPNR may need to justify the level of expenses versus the output of this Title V program. These issues can only be addressed with an extensive follow up financial audit.